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**THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

LAURA A. GADDY,
individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

**CORPORATION OF THE
PRESIDENT OF THE CHURCH
OF JESUS CHRIST OF
LATTER-DAY SAINTS,** a Utah
corporation sole.

Defendant

**REQUEST for ORAL ARGUMENT
on “MOTION to DISMISS SECOND
AMENDED COMPLAINT, or in the
ALTERNATIVE, MOTION to STRIKE”**

(Oral Argument Requested)

(DEMAND FOR JURY TRIAL)

Case: **2:19-cv-00554-RJS-DBP**

Chief Judge: Robert J. Shelby

Chief Magistrate Judge:
Dustin B. Pead

Plaintiffs hereby request that Defendant’s “Motion to Dismiss the
Second Amended Complaint or in the Alternative Motion to Strike” (DKT
#111), filed November 12, 2021, be scheduled for oral argument,
preferably in person, and then submitted for decision per [DUCivR 7-3](#). All

briefing is complete.

The “Motion to Dismiss the Second Amended Complaint, or in the Alternative, Motion to Strike” (Dkt #111) was filed and served on November 12, 2021. The Opposition Memorandum (Dkt #118) was filed and served December 10, 2021. Due to a stipulated extension requested by Defense Counsel, and granted by the Court, the Reply Memorandum (Dkt #121) was filed and served January 7, 2022.

The original Request to Submit for Decision was filed on March 16, 2022 (Dkt. 130) concurrent with a Request to Submit for Decision Plaintiffs’ Motion for Leave to File a Third Amended Complaint (Dkt. 129). A year has passed. Plaintiffs now make clear that they request Oral Argument on Defendant’s Motion to Dismiss the Second Amended Complaint before the Court rules.

Plaintiffs also ask the Court to take judicial notice of the fact that a Motion for Leave to File a Third Amended Complaint, complete with a proposed Third Amended Complaint has been submitted as well.¹

However, Plaintiffs first ask the Court to hear argument on Defendant’s

¹ The “Motion for Leave to File the Proposed Third Amended Complaint” (Dkt #122) was filed and served on January 28, 2022. The Opposition Memorandum (Dkt #126) was filed and served Feb. 25, 2022, after the Court granted a stipulated two-week extension requested by Defense Counsel (Dkt #125). The Reply Memorandum (Dkt #128) was filed and served March 14, 2022, due to a “Service Interruption” with Pacer.gov which occurred the evening of Friday March 11, 2022 and for which Defense Counsel was notified. A Request to Submit for Decision was filed on March 16, 2022, (Dkt #129), concurrent with the Request to submit for Decision Defendant’s 12(b)(6) Motion to Dismiss the Second Amended Complaint.

12(b)(6) Motion for dismissal of the Second Amended Complaint, keeping in mind that Plaintiffs have asked for Leave to File a Third Amended Complaint.²

Plaintiffs request that the Court allow this Motion to proceed so that a Revised Motion for a Third Amended Complaint, that will include as a proposed third amended complaint, claims based on insight and comments that the Court may offer at the hearing on the Motion to Dismiss the Second Amended Complaint, what is contained in the proposed Third Amended Complaint on file (Dkt 122-1) and emphasizing and perhaps rewording the tithing claims, particularly in light of the SEC's recent \$5 Million fine imposed against Defendant where the SEC found that Defendant "prevent[ed] public disclosure by Ensign Peak of the Church's equity securities holdings." And misstated in its 13F filings "...that they had sole investment and voting discretion over the listed securities, when Ensign Peak at all times retained discretion over all investment decisions," a finding that Defendant knowingly misled the investing public [not to mention its tithe paying members].³

² Counsel is aware that Chief Judge Shelby is extremely busy, and the Court is underfunded, as indicated from his address to the federal bar last fall in Heber City.

³ SEC Ruling of February 21, 2023, copy attached to this Request to Submit.

Again, undersigned Counsel realizes that submission of Plaintiffs' Motion for Leave to File a Third Amended Complaint (Dkt 122) may have been premature, but did so because of ambiguities in the case law and the federal rules of civil procedure regarding when such a motion must be made *vis a vis* a pending 12(b)(6) motion. See [Vincent v. Utah Plastic Surgery Soc.](#), 621 F. App'x 546, 551 (10th Cir. 2015). [Unpublished] Counsel asks the Court to use its his wisdom is deciding what is fair and just for the parties in this regard.

Respectfully,

Dated: March 17, 2023,

Kay Burningham, Attorney at Law

/s/ Kay Burningham

Attorney for Laura A. Gaddy, Lyle D. Small, and Leanne R. Harris.